In the Supreme Court of the United States

NO. 76-345

OLIVER L. VARDY,

Petitioner,

vs.

UNITED STATES OF AMERICA and DONALD FORSCHT, UNITED STATES MARSHAL for the Southern District of Florida,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

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MIAMI REVIEW — 371-4853 — 377-3721

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I

OPINION BELOW

The Opinion of the United States Court of Appeals, Fifth Circuit, Case No. 75-2180 is reported at 529 F.2d 404. The Order of the United States District Court for the Southern District of Florida, Case No. 75-164-Civ-WM is unreported. These Opinions appear herein as Appendix "A" and "B" respectively.

II

JURISDICTIONAL STATEMENT

The Judgment and Opinion of the United States Court of Appeals, Fifth Circuit was entered on March 26, 1976, Rehearing was denied June 9, 1976. The Order denying Rehearing appears herein at the end of Appendix "A". The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

III

QUESTION PRESENTED FOR REVIEW

WHETHER PETITIONER WAS "FOUND" IN THE UNITED STATES UNDER ITS EXTRADITION TREATY WITH CANADA WHERE HIS ONLY REASON FOR BEING IN THE UNITED STATES WAS TO SECURE HIS RELEASE FROM ABDUCTION BY CANADIAN AND PANAMANIAN OFFICIALS ATTEMPTING TO TRANSPORT HIM FROM PANAMA TO CANADA.

IV

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI §2, United States Constitution

This Constitution, and the laws of the United States which shall be made in pursuance thereof and all treaties made, or which shall be made under the Authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Amendment V—Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process; Just Compensation for Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in the time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy for life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Treaty between United States and Canada (1842) 8 Stat 572 (1900)

Set out in Appendix "C".

V

STATEMENT OF CASE

On January 23, 1974 Petitioner was abducted against his will and without lawful process in Panama by Panamanian police officials pursuant to a request by the Government of Canada. Although a Canadian-Panamanian Extradition Treaty was in effect, (B.T.S. 1907/24), Petitioner's abduction was not pursuant to any action under the Treaty and, in fact, no such action was ever undertaken.

Nevertheless, Petitioner was held in jail, virtually incommunicado by the Panamanian police until January 25, 1974 when, at the express request and insistence of Canadian authorities, he was taken aboard an aircraft by an *armed* Panamanian guard and escorted to Miami, Florida with the intent and purpose that he be there turned over to a member of the Royal Canadian Mounted Police and transferred to Canada.

All of this occurred in direct violation of state and federal kidnapping laws and would have been accomplished had not Petitioner secured an emergency Writ of Habeas Corpus from the United States District Court in Miami to prevent this kidnapping. Pursuant to the Writ, the United States Marshal took custody of Petitioner at the Miami International Airport. The Court granted the Writ of Habeas Corpus at the hearing held on January 25, 1974 and ordered the Petitioner released from Panamanian custody. However, the United States Government, at the same hearing, filed a complaint for extradition. This complaint was superseded by the complaint for extradition now in effect. Thereafter, Petitioner was admitted to bond pending extradition to Canada.

The extradition proceedings are currently pending in the United States District Court, Southern District of Florida under Case No. 74-88-Civ-WM.

On February 3, 1975, Petitioner moved to dismiss[1] the extradition proceeding upon the ground that he was not extraditable under the terms of the existing treaty between the United States and Canada because, having been abducted illegally, he was not "found" in the United States as that requirement is used in the treaty.

On the ground that the issue was more appropriately raised in a habeas corpus proceeding, the United States Magistrate denied the Motion to Dismiss on February 5, 1975. (Appendix "D")

Thereafter, Petitioner sought habeas corpus in the District Court under Case No. 75-164-Civ-WM. Following a February 24, 1975 hearing on the Rule to Show Cause, Judge Mehrtens dissolved the Rule on February 26, 1975. (Appendix "B")

On April 22, 1975 a timely appeal was perfected pursuant to 28 U.S.C. §2253 during which all proceedings in the lower court have been stayed. (Appendix "E")

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[1]Petitioner styled this Motion as a "Supplemental Motion to Dismiss". Petitioner had previously moved to dismiss the extradition proceeding contesting the jurisdiction of the District Court where the extraditee had been kidnapped into the jurisdiction of the Court. *See, e.g. United States v Toscanino*, 500 F.2d 267 (2nd Cir. 1974). This Motion was denied by the District Court and became the subject of a Petition for an Interlocatory Appeal. That appeal was dismissed on procedural grounds without a ruling on the merits. *See, Vardy v United States*, No. 74-8305, (5th Cir. Sept. 24, 1975) (unreported)

VI

REASONS FOR GRANTING THE WRIT

This case raises a pressing question concerning the extent to which the courts of the United States will allow themselves to become a willing party to an international illegality. The issue raised has placed before the Court a question of treaty interpretation precisely centering on the issue of whether a person kidnapped into this country is "found" here for treaty purposes, and which gives the court an opportunity to disapprove this practice by interpreting the treaty so as to prohibit extradition of persons kidnapped here in violation of every known notion of justice and law at least until such persons evidence an intention to remain.

The treaty provides in pertinent part:

> "It is agreed that Her Britannic Majesty and the United States shall, upon mutual requisitions by them or their Ministers, Officers, or Authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, piracy or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, *shall seek an asylum or shall be found within the territories of the other;* ...." (Emphasis added)

The Fifth Circuit has held that Petitioner had caused his presence within the United States by seeking habeas corpus relief from his abduction through this country to Canada. On its face, this concept is obnoxious to justice and

fair play and, therefore, this Court should grant its Writ for the following reasons:

1. To decide whether due process permits the Courts of the United States to entertain the petition of a foreign government which itself brings the Petitioner into the United States as part of a plot to kidnap him and where the treaty invoked by the foreign government requires that the extraditee be "found" in the United States.

Ever since the decision in *United States v Toscanino*, 500 F.2d 267 (2nd Cir. 1974) the viability of the rule of *Ker v Illinois*, 119 U.S. 436 (1888) and *Frisbie v Collins*, 342 U.S. 519 (1952) to the effect that the government's power to *prosecute* is not impaired by the illegality of the method by which it acquires control over him has been called into serious question. In this regard, it must be remembered in balancing the interests of justice that our government's interest in Petitioner is far less than it would be had he been sought for violation of law in this country. Thus, when weighed in this context, the illegality of Canada's action to bring Petitioner here is far less tolerable.

2. To consider the Court's holding in this case in light of its prior holding in *In Re Chan Kam-Shu*, 477 F.2d 333 (5th Cir.) *cert den.* 414 U.S. 847 (1973) which it attempts to distinguish in its opinion and order on rehearing. (Appendix "A") These cases, the instant case and *Chan* squarely present the question of treaty interpretation whether petitioner was "found" in this country.

Petitioner contends that none of the factors upon which the Court of Appeals relied, e.g. the fact that he had a permanent residency card; that federal officials were not responsible for his presence here; or that he in-

stituted habeas corpus proceedings, are relevant in light of the overwhelming undisputed fact that he was kidnapped here illegally and evidenced no intention ever to return to this country on his own. For this reason, the Court's analysis distinguishing *Chan* is inapposite, a fact which begs this Court's statement in light of substantial international considerations.

3. To put a halt to national and international intrigue as a prelude to extradition under various treaties containing the requirement that the person to be extradited be "found" in the United States. In *Chan, supra*, the Court held that Chan would not have been "found" here if he had been brought here illegally. In the case *sub judice*, Petitioner was also brought here illegally but apparently because it was done by the agent of a government other than our own, albeit in violation of our kidnapping laws, he was considered to have been "found" here. Aside from the patent inconsistency of the two cases, it is clear that a definitive resolution of the problem must be had to prevent similar acts in the future and that only this court can do so.

Respectfully submitted,

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& OSMAN P.A.
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BY _____
DONALD I. BIERMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two true and correct copies of the foregoing were mailed this ____ day of _____, 1976 to SOLICITOR GENERAL OF THE UNITED STATES, United States Department of Justice, Washington, D.C.

_____
DONALD I. BIERMAN

APPENDIX

APPENDIX "A"

United States Court of Appeals,
Fifth Circuit.

No. 75-2180.

Oliver L. VARDY, Petitioner-Appellant,
v.

UNITED STATES of America and Donald Forscht, United States Marshal in and for the Southern District of Florida, Respondents-Appellees.

March 26, 1976.

An alien, a permanent resident, filed petition for habeas corpus relief. The United States District Court for the Southern District of Florida, William O. Mehrtens, Senior District Judge, dismissed the action, and an appeal was taken. The Court of Appeals, Gee, Circuit Judge, held that exercise of habeas jurisdiction was permissible and appropriate, notwithstanding that a final decision had not been reached in proceeding to extradite petitioner; and that alien, who made his home in Florida and possessed card designating him as permanent resident of United States was "found" in United States for purposes of extradition treaty with Canada, regardless of legality or morality of actions of Canadian and Panamanian governments, where immediate cause for alien's physical presence in United States at time extradition proceeding began was his own initiative in employing federal courts to interrupt continuity of his transfer from Panama to Canada and no official of federal government, other than United States

marshal acting on behalf of alien's attorney, had anything to do with arranging his trip from Panama to Canada or with prolonging his stay in Miami.

Affirmed.

1. Habeas Corpus—50

Deferring habeas review until there is a determination of extraditability is a preferable procedure; however, a prior determination of extraditability is not a jurisdictional prerequisite to habeas relief.

2. Habeas Corpus—50

Exercise of habeas jurisdiction was permissible and appropriate, notwithstanding that a final decision had not been reached in proceeding to extradite petitioner, in case in which there had been an excessive and confusing delay in the extradition proceedings.

3. Extradition—2

Extradition treaties should be construed liberally.

4. Extradition—6

Alien, who made his home in Florida and possessed card designating him as permanent resident of United States, was "found" in United States for purposes of extradition treaty with Canada, regardless of legality or morality of actions of Canadian or Panamanian governments, where immediate cause for alien's physical presence in United States at time extradition proceeding began was his own initiative in employing federal courts to interrupt con-

tinuity of his transfer from Panama to Canada and no official of federal government, other than United States marshal acting on behalf of alien's attorney, had anything to do with arranging his trip from Panama to Canada or with prolonging his stay in Miami. 18 U.S.C.A. § 3181; Act Aug. 9, 1842, art. 10, 8 Stat. 572.

See publication Words and Phrases for other judicial constructions and definitions.

Donald I. Bierman, Miami, Fla., for petitioner-appellant.

Robert W. Rust, U.S. Atty., William Northcutt, Jr., Asst. U.S. Atty., Miami, Fla., B. Franklin Taylor, Jr., James P .Morris, Murray R. Stein, John L. Murphy, Attys., Acting Chief, Gov. Reg. Sec., Washington, D.C. for respondent-appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before WISDOM, COLEMAN and GEE, Circuit Judges.

GEE, Circuit Judge:

This case involves a fact situation that can only be described as bizarre, even when compared to other examples of the increasingly frequent and frequently unusual litigation involving international cooperation in law enforcement. Appellant's sole argument is purely legal, very technical, highly ingenious, and totally without merit. We affirm the district court's denial of habeas corpus relief.

Appellant is an alien with a home in Florida; he is a permanent resident of the United States. He has been arrested and is free on bond in connection with a request by Canada, his country of origin, to extradite him to stand trial for his activities as a government official in Canada prior to his emigration to the United States. The extradition proceeding has been pending since January 1974, but no determination of extraditability has been made. This appeal is from the dismissal of Vardy's collateral habeas corpus action. Appellant's argument is that there is no subject matter jurisdiction in the extradition proceeding because he is not "found" in the United States within the meaning of the controlling extradition treaty between the United States and Canada.[1] This argument is based on appellant's interpretation of the events of January 1974, and we are obliged to summarize those events in some detail.

Appellant was arrested in Panama by local officials on January 22, 1974. Accompanied by an armed Pana-

[1]The operative treaty provision, 8 Stat. 572 art. X (1842), states in pertinent part:

> It is agreed that *Her Britannic Majesty and the United States shall, upon mutual requisitions* by them or their ministers, officers, or authorities, respectively made, *deliver up to justice all persons who,* being charged with the crime of murder, . . . piracy or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum or *shall be found within the territories of the other;* . . . . (emphasis added).

The treaty has been supplemented several times in ways not relevant to this case; the locations of these supplements can be found in 18 U.S.C.A. § 3181 (Supp.1976). A new treaty replacing this collection of agreements with a unified document has been ratified. 121 Cong. Rec. 20,861-62 (daily ed. Dec. 1, 1975). Since it also provides that the United States' obligation to extradite embraces "persons found in its territories," S.Exec.Doc. G, 93d Cong., 2d Sess. 1 (1974), its entry into force upon exchange of the instruments of ratification changes neither the issue nor the result in this case.

manian policeman, he flew from Panama to Miami, Florida, on January 25, 1974. The government asserts that this was a voluntary journey, while appellant characterizes it as a "kidnapping," illegal under Panamanian and/or international law. We do not resolve this dispute because we deem it irrelevant to the issue before us. In any event, the trip to Miami was apparently only the first leg of a journey which was intended to return Vardy to Canada. Vardy never took the second leg because his attorney in Miami learned his itinerary in time to interrupt the journey by having the United States Marshal take custody of Vardy in the Miami airport pursuant to a petition for habeas corpus. Proceedings for extradition from the United States to Canada were instituted only after Vardy persuaded the United States courts to interrupt his transfer from Panama to Canada.

[1] Despite its success in the district court, the government now argues that the district court lacked jurisdiction to entertain Vardy's petition for habeas corpus, based on the interpretation of the extradition treaty between the United States and Canada, prior to a determination in the extradition proceeding itself. The government relies on *Jhirad v. Ferrandina*, 355 F.Supp. 1155 (S.D. N.Y.), *rev'd on other grounds*, 486 F.2d 442 (2d Cir. 1973). In that case, the court heard a challenge to an extradition magistrate's jurisdiction prior to a determination in the extradition proceeding but it expressed reluctance to do so and indicated that "unusual circumstances" were required to justify such a procedure. We strongly agree that deferring habeas review until there is a determination of extraditability is a preferable procedure. Indeed, and in view of our disposition of this appeal, we urge the district court and the magistrate to take all steps necessary to

reach an *immediate* determination of Vardy's extraditability. However, we do not believe that a prior determination of extraditability is a jurisdictional prerequisite to habeas relief.[2] Moreover, the same factor which motivated the court in *Jhirad* to exercise habeas jurisdiction, an excessive and confusing delay in the extradition proceedings, is also present in this case.

[2] The government bolsters its argument that habeas relief is premature by contending that this result is mandated by our unpublished disposition of a prior appeal in this case, *Vardy v. United States*, No. 74-8305 (5th Cir., Sept. 24, 1974). In that case, we denied leave to appeal from an interlocutory order and indicated that the district court erred in purporting to exercise direct review of the magistrate's action in the extradition proceeding. The procedural posture of this appeal is different, and nothing in our disposition of the earlier appeal indicates that habeas is unavailable until a final decision is reached in the extradition proceeding. Since the exercise of habeas jurisdiction in this case was permissible and appropriate, we reach the merits of appellant's argument.

[3, 4] Mindful of the rule that extradition treaties should be construed liberally,[3] we have no difficulty in concluding that Vardy is "found" in the United States for the purposes of our extradition treaty with Canada. Vardy makes his home in Florida and enjoys the benefits which accrue to an alien who possesses a card designating him as

[2] *See, e. g., Wright v. Henkel*, 190 U.S. 40, 23 S.Ct. 781, 47 L.Ed. 948 (1903), in which habeas was used to inquire into the jurisdiction of the magistrate prior to a determination in the extradition proceedings.

[3] *E. g., In re Chan Kam-Shu*, 477 F.2d 333, 338 n. 9 (5th Cir.), *cert. denied*; 414 U.S. 847, 94 S.Ct. 112, 38 L.Ed.2d 94 (1973).

a permanent resident of the United States. The immediate cause for his physical presence in the United States at the time the extradition proceeding began was his own initiative in employing the federal courts to interrupt the continuity of his transfer from Panama to Canada. No official of the federal government, other than the U.S. Marshal acting on behalf of Vardy's attorney, had anything to do with arranging his trip from Panama to Canada or with prolonging his stay in Miami. Regardless of the legality or morality of the actions of the Canadian or Panamanian governments, Vardy was "found" in the United States on the afternoon of January 25, 1974, and at all material times thereafter.

Appellant primarily relies on *In re Chan Kam-Shu*, 477 F.2d 333 (5th Cir.), *cert. denied*, 414 U.S. 847, 94 S.Ct. 112, 38 L.Ed.2d 94 (1973). In that case, Chan was a foreign seaman was was physically present in the United States only because the United States Coast Guard instructed the vessel on which he served to approach the Florida coast. This court, *sua sponte*, raised the question of whether Chan was actually a "fugitive from justice" under the terms of the applicable extradition treaty, and in the process of deciding this question, we emphasized, without stating why it was important, that Chan was lawfully brought into and detained in this country. *See id.* at 337-39. We do not attempt to explain the reasoning behind this somewhat obscure aspect of *Chan Kam-Shu;* it is sufficient for the purposes of this appeal to distinguish it. This appeal involves the interpretation of different language in an extradition treaty. This petitioner has substantial contacts with the United States apart from the events which brought him before the courts, and federal officials in this case did not cause the petitioner's entrance into the United States.

Chan Kam-Shu does not require us to determine the legality under Panamanian or international law of Vardy's departure from Panama, and we reiterate that we express no opinion on this question.

Affirmed.

[TITLE OMITTED]

June 9, 1976.

Appeal from the United States District Court for the Southern District of Florida; William O. Mehrtens, Judge.

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(Opinion March 26, 1976, 5 Cir., 1976, 529 F.2d 404).

Before WISDOM, COLEMAN and GEE, Circuit Judges.

PER CURIAM:

In response to petitioner's spirited assertion that the panel opinion improperly departs from *In re Chan Kam-Shu*, 477 F.2d 333 (5th Cir.), *cert. denied*, 414 U.S. 847, 94 S.Ct. 112, 38 L.Ed.2d 94 (1973), we observe that our opinion is not at variance with *Chan Kam-Shu*, which is not applicable here because of critical factual differences. In *Chan Kam-Shu*, the only reason supported by the record for Chan's presence in the United States at the time of the extradition request was the fact that he was being held in jail by federal officials. Here, in contract, Vardy was in

the United States because he chose to remain here rather than complete the journey from Panama to Canada. Federal officals had no role in his entrance into the United States, and their only role in detaining him in this country was to effectuate his own desire.

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

APPENDIX "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 75-164-Civ-WM

OLIVER L. VARDY, Petitioner,
vs.

UNITED STATES OF AMERICA and DONALD FORSCHT, United States Marshal in and for the Southern District of Florida, Respondents.

ORDER DISCHARGING RULE TO SHOW CAUSE AND DENYING PETITION FOR WRIT OF HABEAS CORPUS

THIS CAUSE came on to be heard upon the Petition of OLIVER L. VARDY for Writ of Habeas Corpus against Respondents, United States of America and Donald Forscht, United States Marshal in and for the Southern District of Florida. Petitioner contests the jurisdiction of this Court to proceed with extradition proceedings now pending against him in Case No. 74-88-Civ-WM. The extradition proceeding has been brought by the United States Government on behalf of the Government of Canada. The Court entered a Rule to Show Cause and set this matter for hearing on February 24, 1975.

Upon a review of the file, hearing argument of counsel, and receiving into evidence the following:

1. Transcript of an Evidentiary Hearing held on January 25, 1974 in the Habeas Corpus proceedings brought by Petitioner, Case No. 74-84-Civ-WM;

2. The Transcript of argument before the United States Magistrate on February 5, 1975 in the extradition proceeding against Petitioner, Case No. 74-88-Civ-WM;

3. The sworn statement of Robert E. Crespo, an attorney at law admitted to practice before the Supreme Court of Justice of Panama;

and being otherwise fully advised in the premises, the Court finds as follows:

1. That on January 25, 1975, in a separate proceeding bearing Case No. 74-84-Civ-WM, this Court granted a Writ of Habeas Corpus finding that the original custody of the Petitioner, OLIVER L. VARDY, by unnamed officials of the Government of Panama was unlawful.

2. The present Petition for Writ of Habeas Corpus is based on a question of treaty interpretation as to whether or not, within the meaning of the extradition treaty between the United States and Canada, a person who was unlawfully brought into the United States can be considered to have been "found" in the United States under the case of *United States of America v Chan Kam-Shu*, 477 F.2d 333 (5th Cir. 1973). The Court finds that this is a substantial question of law. However, the Court is of the opinion that when Petitioner, OLIVER L. VARDY, filed a Writ of Habeas Corpus before this Court in Jan-

uary of 1974 in Case No. 74-84-Civ-WM and instituted those proceedings contesting the legality of his custody by the Governments of Panama and Canada, he, therefore, was "found" in the United States for treaty purposes. Therefore it is

ORDERED AND ADJUDGED:

1. That the Rule to Show Cause heretofore entered be and the same is hereby DISSOLVED.

2. That the Petition for Writ of Habeas Corpus be and the same is hereby DISMISSED.

3. That the Court's Order of February 5, 1975 staying all further proceedings be and the same is hereby AFFIRMED and continued in full force and effect.

4. That the bond heretofore posted by Petitioner, OLIVER L. VARDY be and the same is hereby CONTINUED upon the same terms and conditions and shall remain in full force and effect.

DONE AND ORDERED this 26th day of February, 1975 at Miami, Dade County, Florida in Chambers.

W. O. Mehrtens

WILLIAM O. MEHRTENS,
UNITED STATES
DISTRICT JUDGE

CC: Bierman, Sonnett, Beiley & Osman P.A.
United States Attorney, William Northcutt
Murray Stein, United States Department of Justice
Honorable Peter R. Palermo

APPENDIX "C"

A TREATY

Aug. 9, 1842.
Ratified Aug. 22, 1842.

To settle and define the boundaries between the territories of the United States and the possessions of Her Britannic Majesty in North America; for the final suppression of the African slave trade; and for the giving up of criminals, fugitive from justice, in certain cases.

Preamble.
Ante. p. 81.

WHEREAS certain portions of the line of boundary between the United States of America and the British dominions in North America, described in the second article of the treaty of peace of 1783, have not yet been ascertained and determined, notwithstanding the repeated attempts which have been heretofore made for that purpose: and whereas it is now thought to be for the interest of both parties, that, avoiding further discussion of their respective rights, arising in this respect under the said treaty, they should agree on a conventional line in said portions of the said boundary, such as may be convenient to both parties, with such equivalents and compensations as are deemed just and reasonable: and whereas, by the treaty concluded at Ghent on the 24th day of December, 1814, between the United States and His Britannic Majesty, an article was agreed to and inserted of the following tenor, viz: "Art. 10.

Ante. pp. 218, 223

Whereas the traffic in slaves is irreconcilable with the principles of humanity and justice: and whereas both His Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object:" and whereas, notwithstanding the laws which have at various times been passed by the two Governments, and the efforts made to suppress it, that criminal traffic is still prosecuted and carried on: and whereas the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland are determined that, so far as may be in their power, it shall be effectually abolished: and whereas it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the two parties, respectively, that persons committing the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up. The United States of America and Her Britannic Majesty, having resolved to treat on these several subjects, have for that purpose appointed their respective plenipotentiaries to negotiate and conclude a treaty, that is to say, the President of the United States has, on his part, furnished with full powers Daniel Webster, Secretary of State of the United States, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland has, on her part, appointed the Right Honorable Alexander Lord Ashburton, a peer of the said United Kingdom, a member of Her Majesty's most honorable Privy Council, and Her Majesty's Minister Plenipotentiary on a special mission to the United States, who, after a reciprocal communication of their respective full powers, have agreed to and signed the following articles:

ARTICLE I.

Boundary line between U.S. and the British possessions.
Ante. p. 119.

It is hereby agreed and declared that the line of boundary shall be as follows: Beginning at the monument at the source of the river St. Croix as designated and agreed to by the commissioners under the fifth article of the treaty of 1794, between the Governments of the United States and Great Britain; thence, north, following the exploring line run and marked by the surveyors of the two Governments in the years 1817 and 1818, under the fifth article of the treaty of Ghent, to its intersection with the river St. John, and to the middle of the channel thereof; thence, up the middle of the main channel of the said river St. John, to the mouth of the river St. Francis; thence, up the middle of the channel of the said river St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence, southwesterly, in a straight line, to a point on the northwest branch of the river St. John, which point shall be ten miles distant from the main branch of the St. John, in a straight line, and in the nearest direction —but if the said point shall be found to be less than seven miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the river St. Lawrence from those which fall into the river St. John, then the said point shall be made to recede down the said northwest branch of the river St. John, to a point seven miles in a straight line from the said summit or crest; thence, in a straight line, in a course about south, eight degrees west, to the point where the parallel of latitude of 46°25' north intersects the southwest branch of the St. John's; thence, southerly, by the said branch, to the

source thereof in the highlands at the Metjarmette portage; thence, down along the said highlands which divide the waters which empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean, to the head of Hall's stream; thence, down the middle of said stream, till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins, previously to the year 1774, as the 45th degree of north latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and the British province of Canada on the other; and, from said point of intersection, west, along the said dividing line, as heretofore known and understood, to the Iroquois or St. Lawrence river.

ARTICLE II.

Description of the boundary line.
Ante. p. 221.

It is moreover agreed, that, from the place where the joint commissioners terminated their labors under the sixth article of the treaty of Ghent, to wit: at a point in the Neebish channel, near Muddy Lake, the line shall run into and along the ship channel between St. Joseph and St. Tammany islands, to the division of the channel at or near the head of St. Joseph's island; thence, turning eastwardly and northwardly around the lower end of St. George's or Sugar island, and following the middle of the channel with divides St. George's from St. Joseph's island; thence up the east Neebish channel, nearest to St. George's island, through the middle of Lake George; thence, west of Jonas' island, into St. Mary's river, to a point in the middle of that river, about one mile above St. George's or Sugar island, so as

to appropriate and assign the said island to the United States; thence, adopting the line traced on the maps by the commissioners, through the river St. Mary and Lake Superior, to a point north of Ile Royale, in said lake, one hundred yards to the north and east of Ile Chapeau, which last-mentioned island lies near the northeastern point of Ile Royale, where the line marked by the commissioners terminates; and from the last-mentioned point, southwesterly, through the middle of the sound between Ile Royale and the northwestern main land, to the mouth of Pigeon river, and up the said river, to and through the north and south Fowl Lakes, to the lakes of the height of land between Lake Superior and the Lake of the Woods; thence, along the water communication to Lake Saisaginaga, and through that lake; thence, to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermilion Lake, and Lake Namecan, and through the several smaller lakes, straits, or streams, connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudière Falls, from which the commissioners traced the line to the most northwestern point of the Lake of the Woods; thence, along the said line, to the said most northwestern point, being in latitude 49°23'55" north, and in longitude 95°14'38" west from the observatory at Greenwich; thence, according to existing treaties, due south to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky mountains. It being understood that all the water communications and all the usual portages along the line from Lake Superior to the Lake of the Woods, and also Grand portage, from the shore of Lake Superior to the Pigeon river, as now actually used, shall be free and open to the use of the citizens and subjects of both countries.

ARTICLE III.

Navigation of the river St. John to be free to both parties.

In order to promote the interests and encourage the industry of all the inhabitants of the countries watered by the river St. John and its tributaries, whether living within the State of Maine or the province of New Brunswick, it is agreed that, where, by the provisions of the present treaty, the river St. John is declared to be the line of boundary, the navigation of the said river shall be free and open to both parties, and shall in no way be obstructed by either; that all the produce of the forest, in logs, lumber, timber, boards, staves, or shingles, or of agriculture, not being manufactured, grown on any of those parts of the State of Maine watered by the river St. John, or by its tributaries, of which fact reasonable evidence shall, if required, be produced, shall have free access into and through the said river and its said tributaries, having their source within the State of Maine, to and from the seaport at the mouth of the said river St. John's, and to and round the falls of the said river, either by boats, rafts, or other conveyance; that when within the province of New Brunswick, the said produce shall be dealt with as if it were the produce of the said province; that, in like manner, the inhabitants of the territory of the upper St. John, determined by this treaty to belong to Her Britannic Majesty, shall have free access to and through the river, for their produce, in those parts where the said river runs wholly through the State of Maine:

Proviso

Provided, always, That this agreement shall give no right to either party to interfere with any regulations not inconsistent with the terms of this treaty which the Governments, respectively of Maine or of New Brunswick may make respecting the navigation of the said river, where both banks thereof shall belong to the same party.

ARTICLE IV.

Grants of land, &c. within the territory, confirmed to the persons in possession of such grants.

All grants of land heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified, and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims, arising from a possession and improvement, of any lot or parcel of land, by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall, in like manner, be deemed valid, and be confirmed and quieted by a release to the person entitled thereto, of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them.

ARTICLE V.

Distribution of the "disputed territory fund."

Whereas, in the course of the controversy respecting the disputed territory on the Northeastern boundary, some moneys have been received by the authorities of Her Britannic Majesty's province of New Brunswick, with the intention of preventing depredations on the forests of the said territory, which moneys were to be carried to a fund called the "disputed territory fund," the proceeds whereof, it was agreed, should be hereafter paid over to the parties interested, in the proportions to be determined by a final settlement of boundaries: It is hereby agreed, that a correct account of all receipts and payments on the said fund shall be delivered to the Government of the United States, within six months after the ratification of this treaty; and the proportion of the amount due thereon to the States of Maine and Massachusetts, and any bonds or securities appertaining thereto, shall be paid and delivered over to the Government of the United States; and the Government of the United States agrees to receive for the use of, and pay over to, the States of Maine and Massachusetts, their respective portions of said fund; and further to pay and satisfy said States, respectively, for all claims for expenses incurred by them in protecting the said heretofore disputed territory, and making a survey thereof, in 1838; the Government of the United States agreeing, with the States of Maine and Massachusetts, to pay them the further sum of three hundred thousand dollars, in equal moieties, on account of their assent to the line of boundary described in this treaty, and in consideration of the conditions and equivalents received therefor, from the Government of Her Britannic Majesty.

ARTICLE VI.

Commissioners to be appointed to mark the line between the St. Croix and St. Lawrence rivers.

1843, ch. 89.

It is furthermore understood and agreed, that for the purpose of running and tracing those parts of the line between the source of the St. Croix and the St. Lawrence river which will require to be run and ascertained, and for marking the residue of said line by proper monuments on the land, two commissioners shall be appointed, one by the President of the United States, by and with the advice and consent of the Senate thereof, and one by Her Britannic Majesty: and the said commissioners shall meet at Bangor, in the State of Maine, on the first day of May next, or as soon thereafter as may be, and shall proceed to mark the line above described, from the source of the St. Croix to the river St. John; and shall trace, on proper maps, the dividing line along said river, and along the river St. Francis, to the outlet of the Lake Pohenagamook; and, from the outlet of the said lake, they shall ascertain, fix, and mark, by proper and durable monuments on the land, the line described in the first article of this treaty; and the said commissioners shall make to each of their respective Governments a joint report or declaration, under their hands and seals, designating such line of boundary, and shall accompany such report or declaration with maps, certified by them to be true maps of the new boundary.

ARTICLE VII.

Certain waters open to both parties.

It is further agreed, that the channels in the river St. Lawrence, on both sides of the Long Sault islands, and of Barnhart island; the channels in the river Detroit, on both sides of the island Bois Blanc, and between that island and both the American and Canadian shores; and all the several channels and passages between the various islands lying near the junction of the river St. Clair with the lake of that name ,shall be equally free and open to the ships, vessels, and boats of both parties.

ARTICLE VIII.

Mutual agreement for the suppression of the slave trade.

The parties mutually stipulate that each shall prepare, equip, and maintain in service, on the coast of Africa, a sufficient and adequate squadron, or naval force of vessels, of suitable numbers and descriptions, to carry in all not less than eighty guns, to enforce, separately and respectively, the laws, rights, and obligations, of each of the two countries, for the suppression of the slave trade; the said squadrons to be independent of each other; but the two Governments stipulating, nevertheless, to give such orders to the officers commanding their respective forces as shall enable them most effectually to act in concert and cooperation, upon mutual consultation, as exigencies may arise, for the attainment of the true object of this article; copies of all such orders to be communicated by each Government to the other, respectively.

ARTICLE IX.

Parties to unite in remonstrances with other powers within whose dominions a market is found for slaves.

Whereas, notwithstanding all efforts which may be made on the coast of Africa for suppressing the slave trade, the facilities for carrying on that traffic, and avoiding the vigilance of cruisers, by the fraudulent use of flages and other means, are so great, and the temptations for pursuing it, while a market can be found for slaves, so strong, as that the desired result may be long delayed, unless all markets be shut against the purchase of African negroes; the parties to this treaty agree that they will unite in all becoming representations and remonstrances, with any and all Powers within whose dominions such markets are allowed to exist; and that they will urge upon all such Powers the propriety and duty of closing such markets effectually, at once and forever.

ARTICLE X.

Criminals to be delivered up to either party, upon requisition, &c.

1849, ch. 167.

It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed with the jurisdiction of either,

shall seek an asylum, or shall be found, within the territories of the other: provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed: and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper Executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition, and receives the fugitive.

ARTICLE XI.

Duration of the treaty.

The eighth article of this treaty shall be in force for five years from the date of the exchange of the ratifications, and afterwards until one or the other party shall signify a wish to terminate it. The tenth article shall continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

ARTICLE XII.

Ratifications to be exchanged within six months.

The present treaty shall be duly ratified, and the mutual exchange of ratifications shall take place in London, within six months from the date hereof, or earlier if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this treaty, and have hereunto affixed our seals.

Done, in duplicate, at Washington, the ninth day of August, Anno Domini one thousand eight hundred and forty-two.

DANL. WEBSTER, (L.S.) ASHBURTON, (L.S.)

APPENDIX "D"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 74-88 CIV-WM

UNITED STATES OF AMERICA,
-vs-
OLIVER VARDY

ORDER

This Cause came on to be heard upon the Supplemental Motion to Dismiss of defendant Oliver L. Vardy to dismiss the complaint for Extradition against him. Having heard oral argument by counsel and government, and having considered memorandums filed and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the Supplemental Motion to Dismiss is hereby DENIED for the reason that the subject matter considered in the Motion would be more appropriately pursued by Habeas Corpus.

DONE AND ORDERED at Miami, Florida this 5th day of February, 1975.

/s/ Peter R. Palermo

PETER R. PALERMO,
UNITED STATES MAGISTRATE

cc: Bierman, Sonnett, Beiley & Osman, P.A.
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APPENDIX "E"

[TITLE OMITTED]

ORDER

This cause is before the court regarding and extradition proceeding set for February 24, 1975 at 10:00 AM before the Honorable Peter R. Palermo, United States Magistrate.

On February 5, 1975 the Honorable William O. Mehrtens, United States District Judge entered a Rule To Show Cause and a stay order on all proceeding until final disposition of these instant Habeas Corpus proceedings and any appellate proceedings relative thereto are completed in Case #-75-164 CIV-WM.

ORDERED AND ADJUDGED that all further proceedings in U. S. v. Vardy 74-88 CIV-WM before the undersigned are hereby stayed until such disposition of said Habeas Corpus is completed.

DONE AND ORDERED at Miami, Florida, this 7th day of February, 1975.

/s/ Peter R. Palermo

PETER R. PALERMO,
UNITED STATES MAGISTRATE

cc: Bierman, Sonnett, Beiley & Osman, P.A.
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